Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-152
	)	
	)	
Telemessaging, Electronic Publishing, and Alarm Monitoring Services	)	
	)	
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BELLSOUTH REPLY

BELLSOUTH CORPORATION

By Its Attorneys

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TABLE OF CONTENTS

SUMMARY

Congress intended the Telecommunications Act of 1996 to establish a "de-regulatory" national framework for the telecommunications *industry*, including BOCs and other LECs. Through this proceeding the Commission proposes to implement the requirements *"prescribed by Congress."* Some parties, however, would have the Commission rewrite the Act through adoption of additional and onerous rules. Such proposals are inconsistent with the Act and beyond the Commission's authority.

The Commission's reach over intrastate matters is limited by Section 2(b), except where Congress has given it an express grant of such authority or where subject to the "impossibility" doctrine under *Louisiana PSC*. Sections 260, 274, and 275 are devoid of express grants of intrastate authority to the Commission, and no party has made a showing to support preemption under *Louisiana PSC*. Accordingly, the Commission's reach over intrastate matters in this proceeding is extremely limited.

Agreements urging stricter nondiscrimination constraints on BOCs' telemessaging operations must be rejected. The suggestion of a separate subsidiary requirement is simply at odds with language and structure of the Act. Additionally, arguments that the provisions of Section 260 are "absolute" ignore that Congress has already deemed the nondiscrimination standards of Computer III to satisfy its intent. Finally, the Commission should not succumb to arguments that would place objectives of expedience over standards of fairness in expedited complaint procedures.

In Section 274, Congress imposed substantial penalties on BOCs' abilities to engage in electronic publishing services. The burdens imposed by Congress are extensive and precise. The

Commission does not have the authority or a need to add to these requirements. Nor should the Commission interpret Congress' requirements in a way that would undermine the joint marketing opportunities for which Congress expressly provided. The Commission should eliminate the Computer III and ONA nondiscrimination requirements for electronic publishing because those requirements were intended to operate *in lieu of* structural segregation, not as cumulative regulations.

Section 275 does not preclude relationships between a BOC and alarm monitoring service providers that fall short of an "equity interest" or "financial control." The Commission should reject AICC's protectionist attempt to construe Section 275 to include sales agency and similar relationships as the provision of alarm monitoring services.

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BellSouth Corporation, for itself and on behalf of its affiliated companies ("BellSouth"), hereby responds to comments submitted pursuant to the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 96-152, FCC 96-310 (released July 18, 1996) ("*Notice*").

I. INTRODUCTION

In the Notice, the Commission properly observed that Congress, in enacting the Telecommunications Act of 1996,[1] "sought to establish 'a pro-competitive, *de-regulatory* national policy framework' for the U.S. telecommunications *industry*."[2] Consistent with this Congressional objective, the Commission defined its role in this proceeding as being "to clarify, where necessary, and to implement the non-accounting separate affiliate and nondiscrimination safeguards *prescribed by Congress* in sections 274, 275, and 260 with respect to BOC and/or

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act") (amending the Communications Act of 1934 (the "Communications Act"), *codified at* 47 U.S.C. §§ 151 *et seq.*).

[2] *Notice* at ¶ 1, *quoting* Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) (emphasis added).

LEC provision of electronic publishing, alarm monitoring, and telemessaging services, respectively."[3]

Notwithstanding Congress's clear expression that its "de-regulatory national policy framework" was intended to benefit the entire "telecommunications industry," inclusive of BOCs and other LECs, and the Commission's own stated objective of implementing the requirements "prescribed by Congress," several parties have attempted to seize the opportunity of this proceeding to advocate *additional* regulation of BOCs and/or LECs or to invent purported "safeguards" over and above the constraints prescribed by Congress. In these Reply Comments, BellSouth responds to some of the more egregious examples of parties' attempts to rewrite the Act through onerous Commission rules.

II. SCOPE OF THE COMMISSION'S AUTHORITY

To maximize the impact of any rules they would have the Commission adopt, parties advocating heavy-handed regulation by the Commission strain to conclude that the Act gives the Commission broad authority over intrastate telemessaging, electronic publishing, and alarm monitoring services.[4] In essence, these parties' arguments boil down to a claim that where the 1996 Act does not expressly grant jurisdiction to the states, the Commission has general jurisdiction over intrastate matters. As BellSouth and others showed in their comments,[5]

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[3] *Notice* at ¶ 2 (emphasis added).

[4] *See, e.g.*, Comments of Alarm Industry Communications Committee ("AICC"), Association of Telemessaging Services International ("ATSI"), AT&T Corporation ("AT&T"), MCI Telecommunications Corporation ("MCI"), Newspaper Association of America ("NAA"), Time Warner Cable ("Time Warner"), Voice-Tel ("Voice-Tel").

[5] *See, e.g.*, Comments of Bell Atlantic ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), Public Utilities Commission of the State of California ("California"), State of New York Department of Public Service ("New York').

however, this analysis of the allocation of jurisdiction under the Communications Act is exactly backwards.

Section 2(b) of the Communications Act reserves to the states, not to the Commission, exclusive jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier."[6] Absent preemption under the "impossibility exception" of *Louisiana PSC*,[7] this general reservation of authority to the states can be defeated only by an express grant of intrastate authority to the Commission. Thus, claims such as Voice-Tel's that "the language of Section 260 does not limit the FCC's authority to either interstate or interLATA activities" are irrelevant.[8] The more salient fact is that neither Section 260 nor Sections 274 or 275 expressly grants the Commission any authority over intrastate matters. These sections all remain subject to the general reservation of authority to the states under Section 2(b).[9]

Nor has any party provided a legitimate argument to support exercise of the Commission's preemptive powers in the absence of express jurisdiction. For example, Voice-Tel merely asserts that because "[t]elemessaging services, by their very nature, involve significant interstate

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[6] 47 U.S.C. § 152(b).

[7] *Louisiana Public Service Comm'n,* 476 U.S. 355 (1986) (*"Louisiana PSC"*).

[8] Voice-Tel Comments at 7. See also, AT&T Comments at 10 ("Section 274 neither grants any regulatory authority to the state commissions nor in any way limits the Commission's authority to regulate all aspects of electronic publishing by the BOCs, including both interstate and intrastate.").

[9] AT&T also suggests that Section 260 grants the Commission authority over certain intrastate matters on the same theory upon which the Commission based its decision in its recent *Interconnection Order*, First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996) (*"Interconnection Order"*). The Commission's jurisdictional analysis in that proceeding was erroneous and is currently the subject of appellate review. It provides little stable basis upon which to base any assertion of jurisdictional authority in this proceeding.

communication," the Commission has jurisdiction over intrastate telemessaging matters.[10] AT&T makes a similarly fallacious argument, asserting that the Commission's alleged jurisdiction over intrastate telemessaging matters is "reinforced by the fact that telemessaging services use the same equipment for all calls, whether the call is local, intraLATA, intrastate or interstate."[11] As the courts[12] have made clear, however, mixed jurisdictional use of a service, in and of itself, is insufficient to establish Commission jurisdiction over the matter to be regulated. There must be a finding that the intrastate and interstate components of the matter to be regulated are inseverable and that state regulation of the intrastate component would necessarily thwart or impede the Commission's exercise of its authority over the interstate component.[13] Moreover, exercise of preemption pursuant to this standard must be narrowly tailored.[14] Unsupported or unexplained assertions that "it *may* not be possible to separate the interstate and intrastate portions of *any* regulations"[15] adopted under Section 260 are woefully inadequate to sustain exercise of the Commission's preemptive powers.

III. SECTION 260 -- TELEMESSAGING SERVICES

Section 260 imposes on BOCs and other LECs straightforward cross-subsidy prohibitions and nondiscrimination obligations and directs the Commission to establish a procedure for expedited consideration of complaints of violation of those requirements which result in "material

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[10] Voice-Tel Comments at 7.

[11] AT&T Comments at 5-6.

[12] *See, e.g., California v. FCC,* 905 F.2d 1217 (9th Cir. 1990) (*"California I"*).

[13] *See, e.g., National Ass'n of Regulatory Utility Commissioners v. FCC,* 880 F.2d 422 (D.C. Cir. 1989).

[14] *Id.*, at 430.

[15] ATSI Comments at 5 (emphasis added).

financial harm" to a provider of telemessaging service.[16] The BOCs have been operating under these same obligations for a number of years now, with no complaints filed with the Commission. Yet, some parties now contend that Congress intended to tighten the constraints under which the BOCs operate. These parties simply ignore the de-regulatory nature of the 1996 Act.

A. The Nondiscrimination Standard

Voice-Tel totally perverts the obvious will of Congress by arguing that in order for LECs to have any hope of meeting the nondiscrimination standard established by Congress, the Commission must require LECs to operate their telemessaging services through a separate subsidiary.[17] The simple response is that had Congress intended the Act to require LECs to offer telemessaging services through a separate affiliate, it would have so stated. This conclusion is particularly manifest given that within the same Act Congress did in fact establish separate subsidiary requirements for specified activities.[18] Telemessaging was not among them.

Nor does anything in the Act suggest that Congress intended the obligations under Section 260 to be construed to be so "absolute" as to render impermissible activities that have long been permitted under the Commission's Computer III framework. Indeed, in Section 276,[19] in which the Commission is directed to establish nonstructural safeguards where none have existed previously, Congress expressly recognized the Commission's Computer III rules as an appropriate standard for such safeguards. Moreover, in that section, Congress imposed on BOC payphone operations cross-subsidy and nondiscrimination obligations that are almost identical to those

[16] 47 U.S.C. § 260.

[17] Voice-Tel Comments at ii.

[18] *See, e.g.,* 47 U.S.C. §§ 272, 274.

[19] 47 U.S.C. § 276.

imposed in Section 260 on LECs' telemesssaging services. One can only conclude that those same obligations that are satisfied by the Commission's Computer III scheme under Section 276 are equally satisfied by the Computer III standards under Section 260.

Given that Congress did not intend to displace the nondiscrimination standards developed under Computer III with a more restrictive standard, Voice-Tel's claim that LECs must operate their telemessaging services through a separate subsidiary is clearly erroneous. So is its claim that LECs must market the telemessaging services of other parties.[20] And, so is its claim regarding advertising.[21] Indeed, nothing in the Act supports Voice-Tel's extreme position, and it must be rejected.

ATSI similarly reaches beyond the bounds of Section 260 to assert that "safeguards must be established to ensure that ESPs like telemessagers have access to the incumbent network through interconnection and collocation and access to unbundled basic service functions with costs attributed to individual functionalities and features required to provide enhanced telecommunications services to the public."[22] To the extent ATSI is attempting to piggy-back incumbent LECs' Section 260 obligations to telemessaging providers onto incumbent LECs' Section 251-252 obligations to requesting telecommunications carriers, the Commission has already determined that the rights of ESPs (including telemessaging providers) are not the same as those of telecommunications carriers under Sections 251-252.[23] Had Congress intended ESPs to

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[20] Voice-Tel Comments at 10.

[21] *Id.*

[22] ATSI Comments at 7.

[23] *Interconnection Order*, CC Docket No. 96-98, at ¶¶ 992, 995 (enhanced service providers are entitled to the rights under section 251(a) only to the extent they are providing telecommunications services).

have such rights, it would have included ESPs in Section 251-252. Had Congress intended telemessaging providers to have such rights under Section 260, it would have included those rights in that section. Of course, Congress did neither.

Instead, Congress chose to rely on general nondiscrimination principles, knowing that such principles were embodied in the Commission's Computer III safeguards. Indeed, under these principles, ESPs including telemessaging providers have nondiscriminatory access to the same unbundled services used by BOCs' telemessaging operations. Further, ESPs have access to additional unbundled network services through the reasonable service request and review process (also known as the "120-day" process) established in the Commission's ONA proceedings. Together, these requirements totally satisfy Section 260's fundamental requirement that a LEC "not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services."[24] Finally, the Commission has repeatedly determined that BOCs are not required to permit nonaffiliated ESPs to collocate their equipment in the BOCs' central offices, finding that ESPs are not disadvantaged under application of the "two-mile" rule.[25] Section 260's general nondiscrimination obligation does nothing to affect this previous determination.

B. Expedited Complaint Procedures

Section 260(b) directs the Commission to establish procedures for expedited consideration of complaints when a telemessaging provider alleges material financial harm as a result of a LEC's violation of the cross-subsidy or nondiscrimination provisions of Section 260(a). ATSI's

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[24] 47 U.S.C. § 260 (a)(2).

[25] *See, e.g.*, Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 3084 (1990).

recommendations on this section, however, would remove all vestiges of "process" from the procedures it would have the Commission adopt.

ATSI attempts to sidestep the issue of process from the start by asserting that "Section 260 is not intended to mimic a legal proceeding." Of course, on a certain level, ATSI's assertion has a truth to it: Section 260 is not intended to *mimic* a legal proceeding, it *is* a legal proceeding. Moreover, just as under Section 208, the incorrect resolution of a Section 260 complaint in favor of a complainant could result in material financial harm to a LEC. LECs should not be denied the opportunity guaranteed by fair process to avert such consequences.

At the outset, the Commission should clarify that Section 260 procedures may only be invoked to redress material financial harms allegedly resulting from actual violation of the Section 260(a) obligations. Thus, Section 260(b) does not establish a forum for hearing of "facts or circumstances that *could* result from prohibited conduct."[26] No purpose would be served by establishing expedited procedures for hearing such speculative debates.

Nor is Section 260(b) intended to resolve every complaint a telemessager might raise in which it alleges a difference in the separate relationships between the LEC and the LEC's integrated telemessaging operations and between the LEC and a nonaffiliated telemessaging provider. Indeed, by its terms, Section 260(a)(2) addresses preferences or discrimination in the LEC's provision of "telecommunications services".[27] Thus, claims based on practices regarding

[26] ATSI Comments at 9 (emphasis added).

[27] 47 U.S.C. § 260(a)(2). "Telecommunications service" is defined in the Communications Act as "the offering of telecommunications . . ." 47 U.S.C. §3(46). "Telecommunications" is defined to mean "transmission . . ." 47 U.S.C. § 3(43).

Yellow Pages listings or CPNI solicitations[28] are not proper subjects of Section 260(b) procedures because those activities are not "telecommunications services."

Further, the Commission must confirm that some showing greater than a mere claim of "denial or delay" in service availability is necessary to establish a *prima facie* claim for relief. At a minimum, the claim must include an allegation that the practice complained of constitutes a prohibited discrimination or cross-subsidy and must set forth the facts upon which the claim is based.[29] Thus, the Commission should not excuse telemessaging providers from undertaking necessary "preparatory work" before filing a complaint.[30] Indeed, the more preparatory work the complainant undertakes and the more information it provides, the more likely that the matter can be handled expeditiously.

The Commission should also reject ATSI's notion that "material financial harm" can be presumed from the nature of the alleged violation. The Act specifies that Section 260(b) procedures are only available to redress alleged violations "that result in material financial harm." Thus, a complaining party must demonstrate not only that material financial harm has in fact occurred, but also that there is a causal relationship between the alleged violation and the harm suffered. The Commission should also confirm that unsupported claims of "lost opportunities" are inadequate to show material financial harm.[31]

The Commission must also reject ATSI's attempts to turn the Commission's Section 260(b) procedural rules into a set of substantive rules through procedural "presumptions." For

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[28] ATSI Comments at 10.

[29] A mere showing of "the inability of a telemessager to secure access" to desired network services would not meet this standard. See ATSI Comments at 9.

[30] *Id.*

[31] *Id.* at 11.

example, ATSI urges the Commission to "develop presumptions regarding access to network elements, including the presumption that if any one incumbent is offering a basic service function, then any other will be able to do so."[32] In the first instance, such a presumption is not relevant to whether a LEC has "discriminate[d] in favor of its telemessaging operations service operations in its provision of telecommunications services," since the LEC is not even providing the basic service function in question. Moreover, the Commission previously has declined to require each BOC to offer ESPs the identical unbundled services as every other BOC.[33] The Commission should not validate ATSI's attempt to end-run these conclusions by building contrary substantive rule "presumptions" into the Section 260(b) process.

Finally, the Commission should resist ATSI's attempt to turn the expedited complaint procedures under Section 260 into mini-rulemaking proceedings. Thus, the Commission should deny ATSI's request that telemessaging provider be allowed to use the Section 260(b) complaint process to "specifically request new or amended safeguards."[34]

IV. SECTION 274 -- ELECTRONIC PUBLISHING

In Section 274 of the Act, Congress enacted extensive provisions restricting BOCs' abilities to engage in the provision of electronic publishing services. Those provisions address nearly every aspect of the BOCs' activities including structural and transactional requirements between the BOC and its separated electronic publishing joint venture, joint marketing authority, and nondiscrimination obligations. Many parties recognized the obvious: that Congress enacted these comprehensive and detailed provisions with an expectation that they be "self-executing" and

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[32] *Id.* at 12.

[33] *See, e.g.,* Filing and Review of Open Network Architecture Plans, 6 FCC Rcd 6723 (1991).

[34] ATSI Comments at 13.

not needful of supplementary implementing regulations. Notwithstanding these already intrusive and extensive statutory constraints, however, other parties assert that the Commission must impose even greater restrictions on BOCs' electronic publishing interests. Those parties' assertions and the rules they would have the Commission impose cannot be sustained.

A. Operational Independence

Section 274(b) requires the separated affiliate or joint publishing venture through which a BOC engages in the provision of electronic publishing service to be "operated independently" from the BOC. In Section 274(b)(1)-(9), Congress enumerated specific requirements addressing the requisite degree of separation. Several of these specific provisions by their terms apply only to separated affiliates, while others expressly apply to both separated affiliates and joint ventures. Nevertheless, some parties erroneously suggest that *all nine* provisions apply equally to both joint ventures and separated affiliates. Such an interpretation cannot be squared with the plain language of the Act.

That Congress intended its requirements to apply differently to the BOCs' electronic publishing activities depending on whether a BOC chooses to operate through a separate affiliate or a joint venture is evident throughout Section 274. Indeed, as Time Warner points out,[35] Congress repeatedly referred to separate affiliates and joint ventures in the disjunctive sense, continually reinforcing the notion that they are alternative business forms to be accorded alternative treatment under Section 274. In contrast, had Congress intended that they be subjected to the same limitations under Section 274, it could have avoided making any distinctions merely by permitting BOCs to conduct electronic publishing operations through either of the two

[35] Time Warner Comments at 10.

business forms and then articulating rules that would apply across the board to BOC electronic publishing operations, without repeatedly having to recognize the particular business forms. That Congress expressly permitted two business forms and meticulously identified the operational constraints that attach to each shows that Congress intended its distinction to make a difference.

Some parties also erroneously assert that Congress intended the "operated independently" standard to stand as a separation requirement over and above those already itemized by Congress, or to represent some direction to the Commission to develop additional "safeguards" (read: penalties). These propositions cannot withstand scrutiny.

Congress intended its itemized list of restrictions to be the complete expression of its requirements. First, contrary to some assertions, Congress did not direct the Commission to adopt regulations under Section 274[36] or to "amplify" those Congress enacted. Second, the extent of coverage and the degree of detail together indicate Congress's deliberate determination of the restrictions to be imposed. Third, the penalties imposed by Section 274 include certain restrictions that are absent from the comparable limitations enacted under Section 272. This shows that Congress has weighed the circumstances of its restrictions carefully and, to the extent it may constitutionally impose any, has imposed only those it deemed appropriate under the respective circumstances. The Commission is not free to add to those requirements.[37]

Nor is it relevant that the Commission has previously included additional requirements when it has imposed separate subsidiary and operational independence requirements in the past.[38] Congress must be deemed to have been aware of the tools utilized by the Commission on past

[36] Time Warner Comments at 2.

[37] *See,* BellSouth Comments at 9-11.

[38] *See, e.g.,* AT&T Comments at 14; Time Warner Comments at 13.

occasion to implement separation requirements, just as it must be deemed to have been aware that overly stringent separation requirements have been shown time and again to be costly and inefficient and likely to suppress innovation and new service development in the separated entity.[39] In light of these factors, Congress engaged in selective inclusion and exclusion of a range of possible separation requirements, culminating in the nine enumerated items in Section 274(b). The Commission should not, need not, and cannot add to that list.

Not satisfied merely to assert that the Commission should adopt more segregation requirements, some parties also urge the Commission to interpret those that Congress did enact in ways clearly at odds with their plain language or purpose. For example, AT&T would have the Commission construe Section 274(b)(2)'s requirement that a separated affiliate or joint venture not incur debt in a manner that would allow a creditor to have recourse to the assets of the BOC also to preclude the BOC's parent holding company from guaranteeing the debt of the electronic publishing enterprise.[40] Such an arrangement, however, clearly is not prohibited by the Act, would not adversely affect ratepayers, and would entail no subsidy of the electronic publishing activity by the regulated BOC. AT&T's proposal is designed to do nothing more than raise the cost of capital to a BOC's electronic publishing venture and should be rejected.

Similarly deficient is AT&T's attempt to limit a BOC electronic publishing venture's access to human resource capital by restricting compensation arrangements for employees,

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[39] *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations,* 104 FCC 2d 958 (1986) (subsequent history omitted); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards,* 6 FCC Rcd. 7571 (1991) (subsequent history omitted); *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies,* 2 FCC Rcd 143 (1987) (subsequent history omitted).

[40] AT&T Comments at 15-16.

officers, or directors of the BOC or electronic publishing entity.[41] AT&T's suggestion that these employees not be compensated "directly or indirectly" on the basis of the performance of another segment of the corporate enterprise would effectively preclude BOCs from offering these employees stock options or other forms of deferred compensation tied to overall firm performance. Such indirect compensation arrangements do not make employees "shared employees" under Section 274(b) and should not be prohibited.

Equally adverse to Congress's express requirements is Time Warner's assertion that Section 274(b)(6) should be read to preclude a BOC's electronic publishing operation from using names, trademarks, or service marks of the BOC even if such names or marks are owned by the BOC's parent holding company.[42] Such an interpretation flies in the face of the plain language and meaning of Section 274(b)(6), which expressly permits the use by the electronic publishing operation of "names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company."[43] Time Warner's assertion that it was not Congress's intent to allow such use when the parent company and the BOC share the use of a name, trademark, or service mark would require the Commission to assume that Congress was unaware that four of the seven regional Bell holding companies share their names with their BOC subsidiaries. The Commission cannot assume that Congress was so uninformed. In fact, it appears that the exception Congress added to Section 274(b)(6) was added to ensure that interpretations such as Time Warner's would not be advanced in the absence of such an exception -- that is, to ensure that the prohibition of Section 274(b)(6) would not be enforced against a

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[41] AT&T Comments at 17.

[42] Time Warner Comments at 16-17.

[43] 47 U.S.C. § 274(b)(6).

BOC whose corporate parent owns the names, trademarks, and services marks that are used by the BOC.

B. Joint Marketing

Section 274(c) permits limited forms of joint marketing between a BOC and its electronic publishing operations, but with more latitude granted to its participation in an electronic publishing joint venture than through a separated affiliate. Indeed, the Act specifically authorizes a BOC to "provide promotion, marketing, sales, or advertising personnel and services to such joint venture."[44] Necessarily included in the provision of such "services" is the participation of the associated personnel in the planning, coordination, and execution of the joint venture's marketing and sales programs.

Time Warner's suggestion[45] that such coordination of activities would not be permitted under Section 274(c)(1)(B)'s general prohibition on a BOC's "carry[ing] out any promotion, marketing, sales or advertising for or in conjunction with an affiliate [including a joint venture]" is misplaced. Time Warner rests its argument on the notion that while Section 274(c)(2)(C) permits BOCs to "provide . . . services to" the joint venture, the BOC may not "carry out . . . marketing . . . in conjunction with" the joint venture according to Section 274(c)(1)(B).[46] Time Warner's construction of the relationship between these provisions is in error.

First, the prohibition of Section 274(c)(1)(B) upon which Time Warner relies follows the introductory clause, "In general. --Except as provided in paragraph (2) --".[47] Thus, the permitted

[44] 47 U.S.C. § 274(c)(2)(C).

[45] Time Warner Comments at 25-26.

[46] *Id.* at 25.

[47] 47 U.S.C. § 274(c)(1)(B).

joint marketing activities under Section 274(c)(2)(C) are an express exception to the "general" effects of Section 274(c)(1)(B). Under standard canons of statutory construction, to the extent there is any apparent conflict, the specific exception must be deemed to prevail over the general rule.

Second, Time Warner asserts that the prohibition on activity addressed by the "in conjunction with" clause is meant to include the "stand-alone activities of two entities . . . combined in an effort to benefit simultaneously both entities."[48] Again, however, Time Warner's interpretation cannot be squared with the express exceptions of Section 274(c)(2). In particular, Section 274(c)(2)(B) permits a BOC to engage in teaming or other business arrangements with its electronic publishing joint venture and to provide facilities, services, and basic telephone service information in furtherance of the teaming arrangement. Thus, a BOC and its electronic joint venture are expressly authorized to combine their stand-alone activities in an effort to benefit simultaneously both entities. Time Warner's efforts to circumscribe these joint marketing opportunities granted by Congress must be rejected.

The Commission also should acknowledge that the joint marketing restrictions in Section 274 are directed only at the BOC. Nothing in Section 274 precludes the separated affiliate or joint venture from marketing the BOC's services with its own.[49] Parties' comments that would have the Commission restrict these joint marketing opportunities also must be rejected.[50]

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[48] Time Warner Comments at 25.

[49] *See, e.g.*, Bell Atlantic Comments at 9, NYNEX Comments at 18.

[50] *See, e.g.*, Time Warner Comments at 26.

C. Nondiscrimination Provisions

Several parties suggest that the Commission retain its Computer III an ONA nondiscrimination requirements on top of the statutory structural separation penalties of Section 274.[51] These proposals make little sense. The nonstructural limitations developed in the Computer III and ONA proceedings were specifically designed to operate *in lieu of* structural separation constraints, not to be cumulative with previously existing separation requirements. Since Congress has decided to reimpose a separation penalty on BOCs' electronic publishing operations, the Computer III and ONA requirements become superfluous. Accordingly, those rules should be eliminated.

V. SECTION 275 -- ALARM MONITORING SERVICES

Section 275 prohibits BOCs and their affiliates that were not providing alarm monitoring services on November 30, 1995, from engaging in the provision of such services before February 8, 2001. Parties disagree, however, over what activities constitute the provision of alarm monitoring services.

Section 275(a)(2) provides appropriate guidance. There, BOCs providing grandfathered alarm monitoring services are precluded from acquiring an equity interest in, or obtaining financial control of an unaffiliated alarm monitoring service provider, but are not precluded from entering other relationships with unaffiliated alarm monitoring service providers. This restriction on grandfathered BOCs reflects Congress's apparent intent to limit their provision of alarm monitoring services except through the grandfathered operations. In so restricting grandfathered BOCs' provision of alarm monitoring services, however, Congress did not find it necessary to

[51] AT&T Comments at 21-22; MCI Comments at 6-7; Time Warner Comments at 22.

identify other relationships that would constitute impermissible provision of alarm monitoring services outside of the grandfathered operations. One must conclude that Congress did not consider the other permitted relationships to constitute "provision of alarm monitoring services." Moreover, because the limitation on grandfathered BOCs' expanding their provision of alarm monitoring services except through their existing alarm monitoring operations lasts for the same duration that other BOCs are barred from engaging in the provision of such services, it is apparent that Congress intended its provisions to restrict or permit the same behavior. That is, like grandfathered BOCs, other BOCs may enter relationships with alarm monitoring service providers, short of obtaining an equity interest in or financial control of such providers, without being deemed to be engaged in the provision of alarm monitoring service.

Notwithstanding that Congress has thus given BOCs broad flexibility in entering business relationships without engaging in the provision of alarm monitoring service, AICC asks the Commission severely to restrict that flexibility. BellSouth concurs with SBC's assessment, however, that the Act recognizes an appreciable difference between the provision of a service and the marketing or sale of a service provided by another entity.[52] Moreover, billing and collection, sales agency, and other relationships in which a BOC acts on behalf of a provider of alarm monitoring service and for which the BOC is compensated do not recast the BOC as the provider of the service. Accordingly, the Commission should reject AICC's constrictive reading of the Act.

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[52] SBC Comments at 19-20.

CONCLUSION

The Commission should hold fast to its promise to implement only the requirements "prescribed by Congress." Proposals to rewrite the Act through additional rules or onerous "interpretations" must be rejected.

Respectfully submitted,

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DATE: September 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of September, 1996 served all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties as set forth on the attached service list.

Sheila Bonner

Sheila Bonner

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